In the High Court of Judicature at Madras

Dated : 16.8.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) Nos.426 and 427 of 2004

The Commissioner of Income Tax I
Chennai .. Appellant

Vs

Imperial Granite P.Ltd.,
Chennai .. Respondent

TAX CASE (APPEALS) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 17th September 2003 made in I.T.A.Nos.1126 & 753 / Mds/1995 for the assessment year 1990-91 (ITA NO.250/93-94 dated 26.12.1994 on the file of the Commissioner of Income Tax (Appeals) IV, Chennai against PA No.47-092-CT-5753-67-T dated 15.3.1993 on the file of the Assistant Commissioner of Income Tax, Company Circle IV (2) Chennai).

For Appellant : Mr.J.Narayanaswamy
Standing Counsel for IT
For Respondents: Mr.Philip George

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

These appeals have been preferred by the Revenue, under Section 260-A of the Income Tax Act against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai made in ITA Nos.1126 and 753 /Mds/1995 dated 17.09.2003 and were admitted by framing the following common substantial questions of law:-

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the benefit of
Section 80HHC is available to export of cut and polished granites even for the assessment year

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1990-91 ?

2.Whether in the facts and circumstances of the case, the Tribunal was right granting relief in respect of a claim for deduction, when the lower authority had specifically remitted the matter to the assessing officer for want of details ?

2. The assessment year is 1990-91. The assessee was an exporter of granite blocks. For the relevant assessment year, the assessee claimed the benefit of Section 80HHC on export of dimensional blocks of granites as well as cut and polished granite. The exemption was denied by the assessing officer. Aggrieved by the order of the assessing officer, the assesee filed appeals before the Commissioner of Income Tax (Appeals), who held that deduction is available under Section 80HHC in respect of export turnover of polished slabs of granite, which is about 51% of the gross turnover. With regard to claim for depreciation, the Commissioner of Income Tax Appeals remanded the matter as no details were furnished before him. Both the Revenue and the assessee carried the matter on appeal to the Income Tax Appellate Tribunal in respect of that portion of the order that went against them. The Tribunal held that the assessee is not entitled to Section 80 HHC benefit on the export of dimensional blocks of granite, but is entitled to the same in respect of cut and polished granite. Regarding depreciation including the value of subsidy, the Tribunal allowed the issue in favour of the assessee. The correctness of the said order is canvassed in these appeals.

3. We heard the learned counsel for the Revenue as well as the counsel for the respondent.

4. The 1st question of law with reference to the assessment year had been considered at length by the Supreme in the case of GEM GRANITES VS. COMMISSIONER OF INCOME TAX reported in 271 ITR 322. The said decision arose out of the decision of this Court reported in 262 ITR 426. The Supreme Court affirmed the view taken by this Court. In the said decision it has been held by the Supreme Court that there are no words of restriction in section 80HHC (2)(b) of the Income Tax Act, 1961 before amendment in 1991, which qualify the word "mineral" and it would be reasonable to assume that in the absence of such limitation, the word must be read to include all kinds of minerals, in all forms, i.e. whether subjected to any process or not, as long as it continues to retain the characteristics of the mineral. To hold that the word "minerals" never included processed minerals would require reading words of limitation into an otherwise clear and unambiguous provision. There was no dispute that granite was

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covered by the word "minerals" in the exclusionary clause (b) of sub-section (2) of Section 80HHC . It would follow that under the unamended Section 80HHC(2)(b) cut and polished granite would also be a mineral. The subsequent amendment from 1.4.1991 excepting processed mineral from exclusionary effect could not be given retrospective effect. Hence following the Supreme Court ruling, the first question of law is answered in negative against the assessee respondent and in favour of the Revenue.

5. As far as the second question of law is concerned it could be seen from the assessment order the respondent assessee claimed a sum of Rs. 72,42,990/- as depreciation. However, as per the statement enclosed for claiming depreciation the assessee respondent claimed only Rs.66,12,555/-. Hence the assessing officer disallowed the difference. On appeal, the Commissioner of Income Tax (Appeals) remitted the issue as there was no clarification or other details available to decide the issue. The Tribunal, however, decided the issue in favour of the assessee by stating that the issue was covered by the decision of the Supreme Court in the case of COMMISSIONER OF INCOME TAX VS. P.J.CHEMICALS (210 ITR 830) on the ground that the CIT Appeals deducted the subsidy received from the Government from the cost of the assets for the purpose of depreciation. The said finding is based on no materials and deserves to be set aside by restoring the order of the CIT Appeals. Thus the question of law is answered.

6. In fine, the appeals are allowed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. THE ASSISTANT REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL,
III FLOOR, RAJAJI BHAVAN, BESANT NAGAR,
MADRAS-90.

2. THE COMMISSIONER OF INCOME
TAX (APPEALS) IV,CHENNAI.

3. THE COMMISSIONER OF INCOME
TAX I , CHENNAI.

4. THE ASSISTANT COMMISSIOENR
OF INCOME TAX ,
COMPANIES CIRCLE IV (2) MADRAS.

+1cc to Mrs.Pushya Sitaraman,Sr.St.Counsel for IT Dept. Sr 51677

JRG (CO)
km/10.9.

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